INTRODUCTION TO THE DEATH PENALTY SENTENCING INSTRUCTIONS

These instructions are for the Special Sentencing proceeding in Capital Cases, at which eligibility for a death sentence and imposition of a death sentence are considered.

Some of these instructions assume that there is a single murder victim involved in the case. Appropriate modifications should be made when there is more than one murder victim.

Some of these instructions assume that the defendant has been convicted after trial. Appropriate modifications should be made when the defendant has pled guilty.

PUNISHMENT NOT CONCERN, NON-CAPITAL CASE

INSTRUCTION NO. 1701

The death penalty is not a sentencing option for the court or the jury in this case.

Comment:

I.C. § 18-4004 A(2) requires the court to instruct potential jurors at the outset of jury selection that the death penalty is not a sentencing option for the court or the jury where the prosecuting attorney has not filed notice of intent to seek the death penalty or put the court on notice that the State does not intend to seek the death penalty.

This instruction should only be given if the defendant is charged with murder in the first degree.

Authority:

I.C. § 18-4004 A(2).

PUNISHMENT A CONCERN, CAPITAL CASE

INSTRUCTION NO. 1702

The state is seeking the death penalty in this case. If the defendant is convicted of murder in the first degree, there will then be a separate sentencing hearing. At that hearing, additional evidence may be presented and the jury will be given additional instructions. At the conclusion of that hearing, the jury will then decide if the defendant will be sentenced to death. If the jury decides that the defendant will not be sentenced to death, the judge will sentence the defendant to a term of life imprisonment, during which the defendant could not be paroled for at least ten years and possibly for life.

Comment:

This instruction should only be given if the defendant is charged with murder in the first degree and a valid death notice has been filed.

Source:

I.C. § 18-4004 A(2).

JURY MUST NOT CONSIDER PENALTY

IN GUILT PHASE, CAPITAL CASE

INSTRUCTION NO. 1703

At the conclusion of the trial, you will decide whether the state has proved the defendant guilty beyond a reasonable doubt. The subject of penalty or punishment is not to be discussed or considered by you in making that decision. That is a matter which must not in any way affect your verdict.

Comment:

In the guilt phase of a Capital case, use this instruction. Do not use either ICJI 106 or [PUNISHMENT NOT CONCERN, NON-CAPITAL CASE instruction].

NATURE OF THE HEARING

INSTRUCTION NO. 1704

The defendant in this case has been convicted of the crime of First Degree Murder. We will now have a sentencing hearing [regarding that offense. The court will sentence the defendant for the other offense(s) of which you found [him] [her] guilty].

Additional evidence may be presented during the sentencing hearing. You may also consider the evidence presented during the trial.

Before the death penalty can be considered, the state must prove at least one statutorily-defined aggravating circumstance beyond a reasonable doubt. If you unanimously decide that the state has so proven [the] [one or more] statutory aggravating circumstance[s], then you must decide whether the imposition of the death penalty would be unjust by weighing all mitigating circumstances against each statutory aggravating circumstance that has been proven.

Comment:

This instruction should be given at the beginning of the sentencing hearing before the presentation of evidence.

Authority:

Idaho Code § 19-2515.

DUTIES OF THE JURY

INSTRUCTION NO. 1705

The law that applies to this sentencing hearing is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. It is my job to decide what rules of law apply in this case. While the lawyers may have commented during the trial on some of these matters, you are to be guided by what I say about them. You must follow all the instructions I give you. Even if you disagree or don't understand the reasons for some of the instructions, you must follow them. No single instruction describes all the law that must be applied. Therefore, the instructions must be considered together as a whole.

You must not be influenced by conjecture, public opinion, or public feeling, nor be swayed by mere bias or prejudice. Likewise, you must not be influenced by your own feelings or views about any person's race, color, religion, national ancestry, or sexual orientation.

I have not meant, by these instructions or by any ruling or remark I have made, to indicate any opinion as to the facts or what your verdict should be.

Comment:

This instruction should be given at the beginning of the sentencing hearing before the presentation of evidence.

EVIDENCE

INSTRUCTION NO. 1706

It is your duty to determine the facts and to determine them only from the evidence. You are to apply the law to the facts and in this way reach your decision. You are to consider all evidence admitted [during the trial of this case and] during the sentencing hearing.

At times there may be objections to questions asked witnesses or to exhibits offered as evidence. When that happens, I am being asked to decide whether the answer or exhibit can become evidence. Statements about the admissibility of evidence are to assist me in making that decision. Those statements are not evidence, and you should not consider them or allow them to influence your decision. Likewise, do not try to guess why the objection was made in the first place.

If I "sustain" the objection, the answer or exhibit cannot be accepted as evidence. Do not try to guess what the answer might have been or what the exhibit might have shown. If I "overrule" the objection, the answer or exhibit will be accepted as evidence.

During the sentencing hearing I may order that evidence already accepted should be "stricken" or thrown out. Likewise, I may tell you to disregard statements made by a witness. If I do so, you are to put that evidence or statement out of your mind and are not to consider it when reaching your decision.

Any ruling by me that evidence is relevant or admissible is not an indication that you should believe that evidence or give it any weight. It is your

responsibility, not mine, to decide what the facts are. If any evidence is admitted for a limited purpose, you are not to consider it for any other purpose.

Comment:

This instruction should be given at the beginning of the sentencing hearing before the presentation of evidence.

When there has been a bench trial, a plea of guilty, or a different jury at trial, the sentencing jury should not be instructed to consider trial evidence unless it has been formally admitted at the death penalty hearing.

Use the applicable bracketed material.

BURDEN OF PROOF

INSTRUCTION NO. 1707

It is presumed that no statutory aggravating circumstance exists in this case. This presumption remains throughout the sentencing hearing and during your deliberations. That presumption cannot be overcome unless, from all the evidence, you are convinced that [the] [one or more] alleged statutory aggravating circumstance[s] has been proven beyond a reasonable doubt. The State has the burden of proving the existence of a statutory aggravating circumstance, and that burden remains on the State throughout the sentencing hearing. The defendant is not required to prove the absence of any aggravating circumstance, nor is the defendant required to produce any evidence at all.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Comment:

This is the standard "reasonable doubt" instruction that has been approved by the Supreme Court for use in Idaho. *See* State v. Rhoades, 121 Idaho 63, 82, 822 P.2d 960, 979 (1991); State v. Cotton, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). An alternative, proposed by the ICJI Committee but not approved as to form or content by case-law decision of the Supreme Court, appears as ICJI 103A.

ICJI 103A is as follows: “A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It is the kind of doubt which would make an ordinary person hesitant to act in the most important affairs of his or her own life.”

The Due Process Clause of the Fourteenth Amendment requires that the jury be instructed on the presumption of innocence. Taylor v. Kentucky, 436 U.S. 478 (1977). Although technically not a "presumption", the presumption of innocence is a way of describing the prosecution's duty both to produce evidence of guilt and to convince the jury beyond a reasonable doubt. Id. Describing a reasonable doubt as the kind which would make an ordinary person hesitant to act in the most important affairs of his or her own life was approved by the Supreme Court in Holland v. United States, 348 U.S. 121, 75 S.Ct. 127, 99 L.Ed. 150 (1954) and by the Idaho Supreme Court in State v. Taylor, 76 Idaho 358, 362, 283 P.2d 582, 585 (1955).

DEFENDANT'S RIGHT NOT TO TESTIFY (POST-PROOF INSTRUCTION)

INSTRUCTION NO. 1708

There is never any requirement that the defendant testify. The fact that [he] [she] [has not testified] [did not testify during the guilt phase of the trial] [did not testify during the special sentencing proceeding] must not be used against [him] [her] by you in any way in your deliberations.

Comment:

This instruction should only be given if the defendant elects not to testify during either the guilt phase of the trial or the sentencing hearing, or both. It should be modified by deleting bracketed material as appropriate.

ALLOCUTION

INSTRUCTION NO. 1709

The Defendant has the right to personally address you. This is called the "right of allocution." Allocution is not made under oath and is not subject to cross-examination. The law provides that these statements are something that the defendant is allowed to present to you as mitigation. You may consider these statements in your deliberations.

Comment:

This instruction should be given only if the defendant exercises the right of allocution, and it should be given immediately before the defendant does so.

VICTIM IMPACT STATEMENT

INSTRUCTION NO. 1710

Victims have the right to personally address you by making a victim impact statement, which is a statement concerning the victim's personal characteristics and the emotional impact of the murder. A victim impact statement is not made under oath and is not subject to cross-examination. A victim may not make any statements that are characterizations or opinions about the crime, the defendant, or the appropriate sentence, and you should disregard any such comments.

Comment:

This instruction should be given only if victim impact statements are made, and it should be given immediately before those statements.

The court may modify this instruction by substituting for the word "victims" the names of those who will be making victim impact statements.

Authority:

State v. Lovelace, ___ Idaho ___, ___ P.3d ___ (2003), IDAHO CONST. art. I, § 22(6).

AGGRAVATING CIRCUMSTANCES

INSTRUCTION NO. 1711

You are instructed that the charged statutory aggravating [circumstance is simply an allegation; it is not evidence.] [circumstances are simply allegations; they are not evidence. No juror should be influenced or prejudiced for or against the defendant because of the fact that the death penalty is being sought.

The state has alleged the following statutory aggravating circumstance[s]:

[a] The defendant was previously convicted of another murder.

[b] At the time the murder was committed, the defendant also committed another murder.

[c] The defendant knowingly created a great risk of death to many persons.

[d] The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

[e] The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

[f] By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

[g] The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

[h] The defendant, by prior conduct or conduct in the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

[i] The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim's former or present official status.

[j] The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.

If you unanimously find that one or more of the aggravating circumstances exists, the law requires that you reduce such finding to writing by stating specifically what aggravating circumstance or circumstances exist, if any. This finding must be made a part of your verdict.

If after considering all the evidence you unanimously conclude that there is a reasonable doubt about the existence of a statutory aggravating circumstance, you must indicate on the special verdict form that the statutory aggravating circumstance has not been proven. You must indicate this finding by checking the appropriate box next to such aggravating circumstance or circumstances on the verdict form furnished to you.

If you cannot unanimously agree on whether an aggravating circumstance exists, you must so indicate.

The verdict form must be signed by your presiding juror.

Comment:

The trial judge should list only the aggravating circumstance or circumstances that the defendant was notified of prior to trial.

Authority:

I.C. § 19-2515(9).

DEFINITION OF MURDER FOR REMUNERATION

INSTRUCTION NO. 1712

To prove the defendant [committed] [employed another to commit] the murder for remuneration or the promise of remuneration, the state must prove that remuneration was a motive, cause, or impetus for the murder and not merely the result of the murder. Remuneration means payment or compensation.

Comment:

This instruction should be given if the State alleges I. C. § 19-2515(9)(d).

HAC INSTRUCTION

INSTRUCTION NO. 1713

The terms especially “heinous,” “atrocious, “ or “cruel,” are considered separately; but in combination with “manifesting exceptional depravity.” The terms heinous, atrocious or cruel are intended to refer to those first-degree murders where the actual commission of the first-degree murder was accompanied by such additional acts as to set the crime apart from the norm of first-degree murders.

A murder is especially heinous if it is extremely wicked or shockingly evil.

Atrocious means outrageously wicked and vile.

Cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

The statutory aggravating factor does not exist unless the murder was especially heinous, especially atrocious, or especially cruel, and such heinousness, atrociousness or cruelty manifested exceptional depravity. It might be thought that every murder involves depravity. However, exceptional depravity exists only where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence. The terms “especially heinous manifesting exceptional depravity,” “especially atrocious manifesting exceptional depravity,” or “especially cruel manifesting exceptional depravity” focus upon a defendant’s state of mind at the time of the offense, as reflected by his words and acts.

Comment:

This instruction should be given if the State alleges I.C. § 19-2515(9)(e).

Authority:

State v. Osborn, 102 Idaho 405, 631 P.2d 187 (1981); Walton v. Arizona, 497 U.S. 639, 110 S.Ct. 3047, 111 L. Ed 2d 511 (1990) overruled on other grounds, Ring v. Arizona, 536 U.S. 584 (122 S.Ct 2428, 153 L.Ed 2d 556 (2002); Arave v. Creech, 507 U.S. 463, 113 S.Ct. 1534, 123 L.Ed 2d 188 (1993)

UTTER DISREGARD FOR HUMAN LIFE

INSTRUCTION NO. 1714

"Exhibited utter disregard for human life," with regard to the murder or the circumstances surrounding its commission, refers to acts or circumstances surrounding the crime that exhibit the highest, the utmost, callous disregard for human life, i.e., the cold-blooded, pitiless slayer. "Cold-blooded" means marked by absence of warm feeling: without consideration, compunction, or clemency, matter of fact, or emotionless. "Pitiless" means devoid of or unmoved by mercy or compassion. A "cold-blooded, pitiless slayer" refers to a slayer who kills without feeling or sympathy. The utter disregard factor refers to the defendant's lack of conscience regarding killing another human being.

Comments:

This instruction should be given when the State alleges I.C. § 19-2515(9)(f).

Authority:

Arave v. Creech, 507 U.S. 463. 113 S.Ct. 1534, 123 L.Ed. 2d 188 (1993); State v. Osborn, 102 Idaho 405, 418-19, 613 P.2d 187, 200-01 (1981).

FUTURE DANGEROUSNESS

INSTRUCTION NO. 1715

The phrase "exhibited a propensity to commit murder which will probably constitute a continuing threat to society" means conduct showing that the defendant is more likely than not to be a continuing threat to society. Such finding cannot be based solely upon the fact that you found the defendant guilty of murder. In order for a person to have a propensity to commit murder, the person must be a willing, predisposed killer, a killer who tends toward destroying the life of another, one who kills with less than the normal amount of provocation. Propensity requires a proclivity, a susceptibility, and even an affinity toward committing the act of murder.

Comment:

This instruction should be given when the State alleges I.C. § 19-2515(9)(h).

Authority:

State v. Dunlap, 125 Idaho 530, 873 P.2d 784 (1993); State v. Creech, 105 Idaho 362, 670 P.2d 463 (1983).

DUTY TO CONSULT WITH ONE ANOTHER

INSTRUCTION NO. 1716

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You should fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom, together with the law contained in these instructions. Although you each must decide this case for yourselves, you should do so only after consulting with each other and considering each other's views.

You should deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgments. During your deliberations, you each have the right to re-examine your own views and change your opinions. You should only do so, however, if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence and the law. None of you should surrender your honest opinion as to the weight or effect of the evidence merely because the majority of the jury feels otherwise or for the purpose of returning a verdict.

MITIGATION

INSTRUCTION NO. 1717

A mitigating factor is any fact or circumstance, relating to the crime or to the defendant's state of mind or condition at the time of the crime, or to [his] [her] character, background or record, that tends to suggest that a sentence other than death should be imposed.

A mitigating factor does not have to constitute a defense or excuse or justification for the crime, nor does it even have to reduce the degree of the defendant's blame for the crime.

In that regard, my instructions given at the end of the trial that you were not to allow sympathy for the defendant to enter your deliberations do not apply at this sentencing proceeding. Mitigating factors may include any fact or circumstance that inspires sympathy, compassion or mercy for the defendant.

Evidence supporting the existence of a mitigating factor may come from the trial or this sentencing hearing, whether produced by the defendant or the state.

Authority:

Skipper v. South Carolina, 476 U.S. 1 (1986).

Jury Deliberations

INSTRUCTION NO. 1718

In reaching your verdict, you must first decide whether the State has proven beyond a reasonable doubt that [any of] the statutory aggravating circumstance[s] exists. [You must consider each of the alleged statutory aggravating circumstances.] Your decision as to the existence of [each] [the] statutory aggravating circumstance must be unanimous. If you find that the State has failed to prove the existence of [the] [any] statutory aggravating circumstance, or if you are unable to unanimously agree on that issue, then you must so indicate on the verdict form.

If the State has failed to prove the existence of [the] [a] statutory aggravating circumstance, you need not deliberate further. Merely notify the bailiff that you are done. The judge must then sentence the defendant to life in prison, and the judge must set a fixed period of imprisonment of anywhere from ten years up to life, during which the defendant will not be eligible for parole.

If you unanimously find that the State has proven the existence of [the] [a] statutory aggravating factor, then you must so indicate on the verdict form. You must also then consider whether any mitigating circumstances exist that make the imposition of the death penalty unjust.

If you find that all mitigating circumstances are sufficiently compelling to make the imposition of the death penalty unjust, or you cannot unanimously agree on that issue, then the defendant will be sentenced to life in prison without the possibility of parole.

If you find that all mitigating circumstances do not make the imposition of the death penalty unjust, then the defendant will be sentenced to death.

You must each decide for yourself whether all mitigating circumstances presented, when weighed against each statutory aggravating circumstance proven by the State, are sufficiently compelling to make the imposition of the death penalty unjust. Any finding by you that the mitigating circumstances do or do not make the imposition of the death penalty unjust must be unanimous, but you do not have to unanimously agree upon what mitigating circumstances exist. The existence of mitigating circumstances need not be proven beyond a reasonable doubt. You must each decide for yourself whether mitigating circumstances exist and, if so, then consider them in your individual weighing process.

Once you have reached a unanimous decision on whether or not all mitigating circumstances, when weighed against each aggravating circumstance, make the imposition of the death penalty unjust, or have concluded that you are unable to reach a unanimous decision on that issue, so indicate on the verdict form and notify the bailiff that you are done.

LIFE AND DEATH SENTENCE

INSTRUCTION NO. 1719

A life sentence without possibility of parole under Idaho law means that a person must spend the rest of his or her natural life in prison.

The manner of inflicting the punishment of death in the State of Idaho is by the administration of a lethal injection.

VERDICT FORM

STATE OF IDAHO)
)
vs.)
) Case No._____
)
[ ])
)
Defendant.)
_____)

Part One:

We, the jury, render the following verdict regarding the alleged statutory aggravating circumstance[s]:

(a) Has the State proven beyond a reasonable doubt that [insert statutory aggravating circumstance]?

No _____

Yes _____

Unable to reach a unanimous decision _____

(b) Has the State proven beyond a reasonable doubt that [insert statutory aggravating circumstance]?

No _____

Yes _____

Unable to reach a unanimous decision _____

If you answered either “No” or “Unable to reach a unanimous decision” to [each of] the above question[s], you do not need to answer any other questions. Simply have the presiding juror sign this verdict form and notify the bailiff that you are done.

If you answered “Yes” to [any of] the above question[s], then please answer the question[s] in Part Two.

Part Two:

[Answer only the following questions that concern a statutory aggravating circumstance you have found to exist.]

We, the jury, render the following verdict regarding the weighing of all mitigating circumstances against the statutory aggravating circumstance[s]:

(a) With respect to the statutory aggravating circumstance that [insert circumstance], we find that:

_____ when weighed against this aggravating circumstance, all mitigating circumstances **are** sufficiently compelling that the death penalty would be unjust.

_____ when weighed against this aggravating circumstance, all mitigating circumstances **are not** sufficiently compelling to make imposition of the death penalty unjust.

_____ we are unable to unanimously decide whether or not all mitigating circumstances are sufficiently compelling that the death penalty would be unjust.

(b) With respect to the statutory aggravating circumstance that [insert circumstance], we find that:

_____ when weighed against this aggravating circumstance, all mitigating circumstances **are** sufficiently compelling that the death penalty would be unjust.

_____ when weighed against this aggravating circumstance, all mitigating circumstances **are not** sufficiently compelling to make imposition of the death penalty unjust.

_____ we are unable to unanimously decide whether or not all mitigating circumstances are sufficiently compelling that the death penalty would be unjust.

Once you have completed Part II, please have the presiding juror sign this verdict form and notify the bailiff that you are done.

_____
Presiding juror

Comment:

See the aggravating circumstances instruction for a list of the aggravating circumstances. They may have to be modified to conform to the allegations.